

JUL 8 2003Slade v. Baca, No. 02-56359

THOMAS, Circuit Judge, dissenting:

CATHY A. CATTERSON
U.S. COURT OF APPEALS

I respectfully dissent. Given the state of the record before us, I cannot conclude that the petitioner has demonstrated a triable issue of fact. Therefore, I would affirm the district court.

Faced with a motion for summary judgment, the non-moving party “may not rest upon mere allegations or denials” but must “set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). The mere presence of a specific fact does not transform a conclusory statement into this sort of evidence. Rather, the evidence must be “such that a reasonable jury could return a verdict for the non-moving party.” Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986). If the evidence is “merely colorable,” or is not “significantly probative,” summary judgment may be granted. Id. at 249-50. In other words, the non-moving party must produce “sufficient evidence supporting the claimed factual dispute . . . to require a jury or judge to resolve the parties’ differing versions of the truth at trial.” First Nat’l Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 288-89 (1968).

Here, the critical question is the date upon which Slade was released from custody. In order to establish Slade’s date of release from prison, the Sheriff’s Department submitted a copy of the booking jacket, which bore a large “Released” stamp, a date of “9-17-00” and a signature by Greg Sivard, the official responsible

for “releas[ing] inmates from custody.” Sivard submitted an affidavit declaring that “on September 17, 2000, I processed and released plaintiff, Melvin Lewis Slade, from the custody of the Los Angeles County Sheriff’s Department.” Sivard also declared that “[o]n September 17, 2000, while processing plaintiff’s release, I stamped ‘Released’ on the cover of the booking jacket and signed and dated the jacket, recording the date I released plaintiff from custody.” In short, Sivard explicitly stated that he was responsible for releasing inmates “from custody” and twice declared that he released Slade “from custody” on September 17. Thus, the respondents tendered credible evidence, buttressed by documentary support, that Slade was “released from custody” on that date.

The petitioner’s response merely states that he believes he was released from custody on a different date. This conclusion is not supported by any additional factual context, such as was present in Brass v. County of Los Angeles, 328 F.3d 1192, 1198-99 (9th Cir. 2003). The mere conclusory recitation of dates based upon personal belief without any additional supporting facts is not evidence “such that a reasonable jury could return a verdict for the non-moving party.” Therefore, I would affirm the judgment of the district court.